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MEMORANDUM

Region VII K.C., MO.

SUBJECT: Guidance on Developing Compliance Orders Under Section 3008 of the Resource Conservation and Recovery Act; Failure to Submit and Submittal of Incomplete Part B Permit Applications

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R00011108  
RCRA Records Center

BACKGROUND

Six months after the promulgation of regulations identifying and listing a waste as hazardous (40 CFR Part 261), the treatment, storage, or disposal of that waste by any person who has not received a RCRA permit is prohibited (40 CFR § 270.1(b)).

However, an owner or operator of an existing facility (a facility which was in operation or for which construction was commenced on or before November 19, 1980 (40 CFR §270.2)) is allowed to continue to conduct hazardous waste management (HWM) activities without having received a permit provided that he: 1) submitted Part A of the permit application within six months of promulgation of the regulations in Part 261, and 2) sent EPA notification of his HWM activities within 90 days of promulgation of the regulations in Part 261. An owner or operator who complied with these requirements qualified for "interim status." The owner or operator of a facility with interim status is treated as if he has been issued a permit until EPA makes a final decision concerning issuance of the permit.

An owner or operator must submit Part B of the permit application when required to do so by the Regional Administrator (R.A.). The R.A. is required under 40 CFR §270.1(b) to allow an applicant six months to submit a Part B application; he may allow additional time for submission at his discretion. Failure to furnish a Part B application by the date specified by the R.A. or failure to furnish in full the information required in Part B is grounds



for denial of a RCRA permit (40 CFR §124.3(d)) and termination of interim status (40 CFR §270.10(e)(5)).

Last year, the Regions began to "call-in" (require submission of) Part B of the permit applications from existing hazardous waste management facilities. Some of the Part B applications have not been submitted by the deadline specified in the call-in. Others, though submitted on time, did not contain all of the information required under 40 CFR §§270.14-21. This memorandum sets forth the procedures to be followed when an applicant fails to submit a timely Part B application or submits a timely but incomplete Part B application.

I. FAILURE TO SUBMIT A TIMELY OR COMPLETE PART B APPLICATION BY THE DATE SPECIFIED WHEN THE PART B APPLICATION WAS CALLED-IN

When an owner or operator 1) has not submitted a Part B application or a closure and post-closure plan \*/ by the date specified when the application was called-in, or 2) has submitted a timely but incomplete Part B application, the R.A. should take the following actions:

1) Issue a Notice of Deficiency (40 CFR §124.3(c))

- a) detailing the deficiencies in the Part B application, and
- b) requiring submission of a complete Part B application by a specific date, (the date should generally be within 30 days from the date of issuance of the notice of deficiency), AND

2) Issue a Warning Letter

- a) stating that failure to submit a complete Part B application is a violation of 40 CFR §270.10(a),

\*/ 40 CFR §265.112(c) requires an owner or operator of any HWM facility to submit a closure plan 180 days before he expects to begin closure but in no event later than 15 days after 1) termination of interim status or 2) issuance of a judicial decree or RCRA §3008 compliance order to cease handling hazardous waste. 40 CFR §265.118(c) requires owners and operators of hazardous waste disposal facilities to submit a post-closure plan within the same timeframe. An owner or operator may also submit a closure plan (and, where required, a post-closure plan) with a statement of his intent to cease handling hazardous waste in lieu of a Part B application. If an owner or operator submits the plan(s) with such a statement, the Agency will not take enforcement action against the owner or operator for failing to submit a Part B application, but rather will proceed to review the closure or post-closure plan under Part 265.



If the owner or operator submits a complete Part B application by the date specified in the compliance order, the R.A. should begin to process the permit application.

If the owner or operator does not submit a complete Part B application by the date specified in the compliance order, the R.A. should:

Initiate procedures to terminate interim status by issuing a Notice of Intent to Deny Permit under 40 CFR §124.6(b).

Issuance of a Notice of Intent to Grant or Deny Permit is the appropriate mechanism for initiating procedures to terminate interim status under the RCRA regulations. Under 40 CFR §124.3(d), a permit may be denied for failure to correct deficiencies in the permit application.

B. SUBMISSION OF A PART B APPLICATION WHICH IS MISSING MAJOR ITEMS OF REQUIRED INFORMATION

If, by the date specified in the warning letter, a facility's Part B application is still missing major items of information required under 40 CFR Part 270.14-21 \*\*/ or the information provided to meet these requirements is insufficient, the R.A. should:

1) Issue a Compliance Order under RCRA §3008(a)(1):

a) assessing a penalty in an amount equal to--

- i) \$1000 for each major item of information which is missing or clearly insufficient, plus
- ii) \$500 for each non-major item of information which is missing or insufficient; and

b) requiring submission of a complete Part B application by a date generally not to exceed 30 days from the date of issuance of the compliance order, and

c) stating that failure to submit a complete Part B application by the date specified in the compliance order may result in the initiation of procedures to terminate interim status.

If the owner or operator submits a complete Part B application by the date specified in the compliance order, the R.A. should begin to process the permit application.

If the owner or operator does not submit a complete Part B application by the date specified in the compliance order, the R.A. should:

\*\*/ A list of "major items" is contained in the appendix to this policy.



Initiate procedures to terminate interim status by issuing a Notice of Intent to Deny Permit under 40 CFR §124.6(b).

C. INCOMPLETE PART B APPLICATIONS WHICH CONTAIN ALL MAJOR ITEMS OF REQUIRED INFORMATION

When an owner or operator submits an incomplete Part B application by the date specified in the warning letter which contains all major items of information required under 40 CFR Part 270.14-21, the RA should:

Issue a Compliance Order under §3008 of RCRA:

- a) assessing a penalty in an amount equal to \$500 per missing item of information for failure to submit information required under 40 CFR §270.10(a), and
- b) requiring submission of a complete Part B application by a date generally not to exceed 30 days from date of issuance of the compliance order, and
- c) stating that failure to submit a complete Part B application by the date specified in compliance order may result in the initiation of procedures to terminate interim status.

If the owner or operator submits a complete Part B application by the date specified in the compliance order, the R.A. should begin to process the application.

If the owner or operator does not submit a complete Part B application by the date specified in the compliance order, the RA should:

Initiate procedures to terminate interim status by issuing a Notice of Intent to Deny Permit under 40 CFR §124.6(b).

III. INITIAL PENALTY ASSESSMENT AND PENALTY REDUCTION DURING NEGOTIATIONS

The penalties set forth in this policy are based on the 1) the type of information which is missing or insufficient (a higher penalty is proposed for information designated as "major" than for other missing or insufficient information), and 2) the number of items of information which are missing or insufficient. During initial penalty assessment under this policy, the type and amount of missing or insufficient information in the Part B application are the only factors which should be considered in determining the amount of the penalty.



The following factors should be considered during settlement negotiations in deciding whether to lower the penalty which was initially assessed: 1) good faith efforts by the owner or operator to develop the information, and 2) history of non-compliance (when this information is available). No penalty assessed under this policy should be reduced by more than 40% during settlement negotiations.

#### PURPOSES AND USE OF THIS MEMORANDUM

The policy and procedures set forth in this memorandum and internal office procedures adopted pursuant to this memorandum are intended solely for the guidance of attorneys and other employees of the United States Environmental Protection Agency. They are not intended to nor do they constitute rule-making by the Agency, and may not be relied upon to create a right or a benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency may take any action which is at variance with the policy or procedures contained in this memorandum or with internal office procedures that may be adopted pursuant to this memorandum.



## APPENDIX

Major items of information include the following (where required for the type of facility being permitted):

- 1) waste analysis plan,
- 2) inspection plan,
- 3) contingency plan,
- 4) location information,
- 5) closure plan,
- 6) post-closure plan,
- 7) documentation of financial responsibility mechanisms,
- 8) cost estimates for closure and post-closure,
- 9) principal design plans for the facility (40 CFR §270.15(a), §270.16(a-e), §270.17(b), §270.18(c), and §270.21(b)),
- 10) results of trial burn, plan for trial burn, or information indicating that the facility will meet the 40 CFR §264.343 performance standards,
- 11) land treatment demonstration,
- 12) description of land treatment program,
- 13) summary of any groundwater monitoring data collected during the interim status period,
- 14) description of the groundwater monitoring system to be installed at the facility (40 CFR §270.14(c)(5)), and
- 15) hydrogeologic information (40 CFR §270.14(c)(2)-(3)).